

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1773V

UNPUBLISHED

OLGA CAPKEVICIENE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 12, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Richard H. Moeller, Moore, Hefferman, et. al, Sioux City, IA, for Petitioner.*

*Ronald Elnetta Kosh, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On November 19, 2019, Olga Capkeviciene filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a Table injury – shoulder injury related to vaccine administration (“SIRVA”) – as a result of her December 23, 2018 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 23, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On October 6, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$65,687.90 (representing an award of \$65,000.00 for pain and suffering, and \$687.90 for past unreimbursed expenses). Proffer at 1-2. In the Proffer, Respondent represented that

<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$65,687.90 (representing an award of \$65,000.00 for pain and suffering, and \$687.90 for past unreimbursed expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS**

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<b>OLGA CAPKEVICIENE,</b>	)	
	)	
	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>No. 19-1773V</b>
v.	)	<b>Chief Special Master Corcoran</b>
	)	<b>ECF</b>
<b>SECRETARY OF HEALTH AND HUMAN SERVICES,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

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**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On November 19, 2019, Olga Capkeviciene (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act” or “Act”). *See* 42 U.S.C. §§ 300aa-1 *et seq.* Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine intramuscularly administered in her left shoulder on December 23, 2018. *See* Petition at 1. On May 26, 2021, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury, and on May 27, 2021, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 36; ECF No. 38.

**I. Items of Compensation**

**A. Pain and Suffering**

Respondent proffers that petitioner should be awarded \$65,000.00 in pain and suffering.

*See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$687.90. *See 42 U.S.C. § 300aa-15(a)(1)(B).* Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under *42 U.S.C. § 300aa-15(a)*. Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following<sup>1</sup>: a lump sum payment of \$65,687.90, in the form of a check payable to petitioner.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Olga Capkeviciene: **\$65,687.90**

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

DARRYL R. WISHARD  
Assistant Director  
Torts Branch, Civil Division

s/ Ronald E. Kosh  
RONALDA E. KOSH  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146  
Benjamin Franklin Station  
Washington, D.C. 20044-0146  
Tel: (202) 616-4476  
Email: ronald.kosh@usdoj.gov

DATED: October 6, 2021